

CAPISTRANO BAY DISTRICT  
AGENDA REPORT  
November 15, 2022

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*Old Business*

## ITEM 9b

### Renter Recovery Fee

In 2005 the Board began looking into the possibility of assessing a fee on all rentals in the community. The issue stems from the impact of rental activity and associated problems that consume staff time that could otherwise be spent on activity for which the District was originally established, since dealing with and managing vacation rental activity is not listed as an authorized service in the District's Charter.

During that original effort in 2005, the District set a rental recovery fee at \$50/rental/week, which was met with good cooperation and positive response by the original rental management company, Capistrano Realty. The program ran for about six months before the District was directed by legal counsel to terminate the fee collections. The reasoning by counsel was that since vacation and short term rentals were prohibited by the City during those years, it was therefore alleged to be illegal. It's worthwhile here to note that the program was strictly voluntary as no special benefit process was conducted and there was no community-wide vote taken.

Fast forward to today and since STR's have been legalized in the City, the District can legally assess a fee as long as findings can justify the assessment and the fee amount is no more than the cost to recover lost revenue. Although today, the District must comply with new law established by Prop. 218, as well as other new Government Code changes. Some of those codes are shown below (code citations taken from the California Government Code):

A special tax would need to be approved by two-thirds of the voters if proposed by the District Board of Directors. (Gov. Code, § 53722.) However, if the special tax was proposed by voter initiative, it would need only a majority vote. (*City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703, 721.) After a tax measure is approved by the voters, it is subject to a short 60-day statute of limitations for challenging a tax measure. (See Gov. Code, § 50077.5.) After this period of time expires, the tax is validated. The voters can also approve automatic periodic inflation adjustments. This can ensure that inflation does not necessitate the need to seek voter approval again. If, in the future, the District Board of Directors determines the tax is generating more revenue than the

## ITEM 9b cont.

District needs, the Board of Directors could reduce the amount of the tax actually collected while leaving the voters' authorization in place.

Finally, If the District desired to focus the program on and tax only an identified portion of the District—which seems likely given that not all property in the District chooses to rent their homes—the District could create “zones” to levy a tax on only a portion of the District. (See Gov. Code, §§ 61140–61144.)

Should the Board choose to engage in such a tax process, it must be directed and guided by a professional Assessment Engineering firm, familiar with Community Services District Law and who can conduct a proper assessment of the burden placed on District operations by vacation rental activity, and be able to quantify that burden into a fee amount.

The procedure done back in 2005 to establish the renter recovery fee as a voluntary program probably would not hold up in court today and it is a likely consequence that all monies received would have to be returned and with interest.

The District currently has a professional relationship with the assessment engineering firm of Wildan Financial Services, a firm that deals primarily with municipalities and special districts, and has taken the District through two such assessment procedures; *in 2004 with reestablishing the District User Fee*, and again *in 2020 to bring the User Fee Program into compliance with newly passed law*.

The process, in its basic form, would look something like this:

- engage with counsel to review the Govt. Code and provide a written opinion
- \*engage with an assessment engineering firm to obtain a proposal (*see note below*)
- comply with all the steps in the process
- conduct a properly noticed vote of the homeowners
- officially establish a legal fee program

\*Assessment engineering firms typically have their own in-house counsel but it is recommended that the District seek independent third-party counsel to avoid the potential for conflict of interest.